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ABSTRACT

The following guidelines emerge from recent court decisions: (1) the right to an education is a fundamental property right not to be denied unless an overriding public interest is served; (2) marriage is not sufficient grounds for exclusion of a student from regular academic or extracurricular activities; and (3) pregnancy, whether the girl is married or unmarried, does not appear to be sufficient grounds for exclusion from the regular academic curriculum and probably even extracurricular activities. In the case of a pregnant student, any exclusion from activities or curriculum should be based on immediate concern for the student and unborn child. A physician should be allowed to determine the extent of academic and extracurricular participation, with mutual agreement, if possible, of the student and her parents. Schools can exclude married and/or pregnant students from regular attendance at school or participation in extracurricular activities only under the burden of proof to show that the student in question is immoral, causes substantial disruption in the school operation, or presents a clear and present danger to the health, welfare, and safety of other students. (Author)

A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
1201 Sixteenth Street, N.W. Washington, D.C. 20036

January, 1973

Concerning

STUDENT MARRIAGE AND PREGNANCY

The passage of the 26th Amendment granting voting rights to 18-year-olds, the accelerated enactment of rights of minority and due process laws in the several states, and the rapidly changing mores throughout society have activated the long dormant issue of married and/or pregnant students' rights in schools. This issue has now assumed major proportions for secondary school principals. Although the steady decline of the 'In Loco Parentis" doctrine and the historic U.S. Supreme Court cases of Gault and Tinker are not reviewed in this Legal Memorandum, they should be kept in mind in any discussion of student marriage and pregnancy.

On the one hand, reasonably clear legal principles have established that married girls cannot be compelled to attend school. A 15-year-old girl's claim that marriage emancipates a minor female and releases her from compulsory school attendance laws was substantiated when the Louisiana Supreme Court ruled in her favor in 1946. [State v. Priest, 210 La. 389, 27 So. 2nd 173 (1946)]

In contrast the cases concerning school regulations that prohibit or restrict school attendance are less clear-cut. These cases depend to a large extent upon facts relating to the status of the student (married, married and pregnant, unmarried and pregnant) and the activity in which the student wishes to participate, e.g., regular classes or extracurricular activities such as athletics, class plays, etc.

Generally, in cases going back to 1928, courts have rather consistently held that denial of a regular academic education to students whose ages fall within the compulsory attendance laws should be exercised only in most severe cases, with marriage and/or pregnancy not generally an acceptable cause. [Alvin Independent School District v. Cooper 404 S.W. 2d 76, (1966), McLeod v. State, 154 Miss. 468, 122 So. 737, (1929), and Dutt v. Board of Education of Goodland, 128 Kan. 507, 278 P. 1065, (1928)]

With regard to extracurricular activities, the law is less clear.

For a discussion of the "In Loco Parentis" concept and relevant U.S. Supreme Court cases, see NASSP's Legal Memoranda on Pupil School Records, Student Publications, Smoking in the Public Schools, and Search and Seizure.

Married Students and Extracurricular Activities

In a 1962 opinion, the Ohio Attorney General suggested that school boards were without authority to prohibit married student participation in extracurricular activities:

> In developing a program of education which meets the minimum standards adopted by the state board of education for the education of Ohio youths, boards of education have uniformly included a multitude of extracurricular activities. Such activities have become an integral part of contemporary education and to deprive a student from participating in such activities for the dubious purpose of punishing marriage would amount to an abuse of discretion. . . . except that a board of education may adopt a rule which would, for the physical safety of the student, require that at an advanced stage of pregnancy a pregnant student not attend such activities. (Opinions of the Attorney General of Ohio, 1962, No. 2998.)

On the other hand, a Utah case illustrates the basic rationale for prohibiting student participation in extracurricular activities. In this case, the board of education's right was upheld to excuse or exclude married students from extracurricular activities in hopes of discouraging early marriages. Married students, the board held, frequently dropped out of school. The court stated:

> We have no disagreement with the proposition advocated that all students attending school should be accorded equal privileges and advantages. But the participation in extracurricular activities must necessarily be subject to regulation as to eligibility. Engaging in them is a privilege which may be claimed only in accordance with the standards set up for participation. It is conceded, as plaintiff insists, that he has a constitutional right to get married. But he has no "right" to compel the Board of Education to exercise its discretion to his personal advantage so he can participate in the named activities. Starkey v. Board of Ed. of Davis County Sch. Dist., 381 P. 2d 718 (1963).

In Indiana, a similar case involving a board of education ruled against its policy prohibiting married high school students from engaging in extracurricular activities. [Wellsand v. Valparaiso Community Schools Corporation et al, U.S.D.C., N.D. Indiana, #71H122(2) (1971)] In this instance a married student who was prohibited from playing football brought suit under the Civil Rights Act of 1871, challenging the policy as a violation of his right to equal protection under the 14th Amendment.

The Indiana Athletic Association, in supporting the board policy, offered the following reasons to justify the "marriage rule":

(1) The rule was reasonable because it had minimal impact. (2) The rule forces the married student to discontinue high school athletics in order to "apply his time to the discharge of his family responsibilities. . . ." (3) The rule operates to prevent undesirable interaction between married and unmarried students. (4) The rule prohibits married students from participating in athletics, thereby allowing more unmarried students to participate. (5) There are more "drop-outs" from high school among married students. (6) The "marriage rule" helps reduce the divorce rate.

The Federal District Court, however, ruling in favor of the student, rejected each reason, saying:

> . . .In this case, the testimony is uncontradicted that the plaintiff is an exceptionally fine athlete who has an excellent chance of being offered an athletic scholarship to college. It has also been established that the plaintiff's chances of receiving such financial aid will be greatly jeopardized if he is not allowed to compete during his final year of high school. On the other hand, no evidence has been presented by the defendant which would support a conclusion that any inconvenience or damage will be suffered by the defendants if preliminary relief is granted the plaintiff.

In Texas, a divorced high school girl was prohibited from participating in extracurricular activities. [Romans v. Crenshaw, U.S.D.C., S.D. Texas, Houston Division, case number 71-H-1264, (1971)] This student, like the football player in Indiana, brought her claim under the Civil Rights Act of 1871, charging that the school rule in question violated the equal protection guarantee. She held that participation in the chess club, choir, drama, and National Honor Society "is an element in determining eventual eligibility for college admission or scholarship," and hence a necessary component of her rightful education. The school district argued that it had the duty to discourage student marriages and that married students disrupted the school and promoted an undue interest in sex.

In refusing to decide the case, the U.S. District Court stated that controversies of this character must exhaust administrative remedies provided by the school district "before recourse may be had to the federal courts." The court said:

> . . .each student administration and disciplinary case must stand upon its own facts. Grooming, demonstration, publication, expression, assembly, political purpose, etc., each has its distinctive features in relation to the balance that must be struck between effective school administration and constitutional right and liberties. . .

A ruling in favor of a married student who sued the board of education because of its rule prohibiting her from engaging in school activities because of her marriage was Holt v. Shelton, U.S.D.C., M.D. Tennessee, #833, (1972). In the court's words:

> . . .The regulation which [the] plaintiff is challenging infringes upon her fundamental right to marry by severely limiting her right to an education. The defendants have failed utterly to show that the infringement upon either of these two rights promotes a "compelling" state interest. Indeed, they have failed to show that the

Every girl in the United States has a right to and a need for the education that will help her prepare herself for a career, for family life, and for citizenship. To be married or pregnant is not sufficient cause to deprive her of an education and the opportunity to become a contributing member of society. S.P. Marland, Jr., HEW Assistant Secretary for Education.

regulation in question is even rationally related to--not to mention "necessary" to promote--any legitimate state interest at all. Instead, it is apparent that the sole purpose and effect of the regulation is to discourage, by actually punishing, marriages which are perfectly legal under the laws of Tennessee and which are thus fully consonant with the public policy of that State. It is the opinion of the court that such a regulation is repugnant to the Constitution of the United States in that it impermissibly infringes upon the rights to due process and equal protection of the law of those students who come within its ambit.

Pregnant Students and School Rights

To turn now from the issue of married-student rights, the related rights of school-age mothers, whether married or not, are illustrated by the cases presented below.

The first example in this category involves two young mothers who were declared ineligible to attend school because they were not married, either before or after the birth of their children. [Perry v. Granada Municipal Separate School District (Miss.), 300 F. Supp. 748, (1969)] They challenged the school board policy excluding unwed mothers from high school admission as a violation of the due process and equal protection clauses of the 14th Amendment. The court ruled in favor of the students, saying:

> . . .that unwed mothers could not be excluded from high schools of the district for sole reason that they were unwed mothers. . .unless on a fair hearing before the school authorities they were found to be so lacking in moral character that their presence in the schools would taint the education of other students. . ..
>
> The Court would like to make manifestly clear that lack of moral character is certainly a reason for excluding a child from public education. But the fact that a girl has one child out of wedlock does not forever brand her as a scarlet woman undeserving of any chance for rehabilitation or the opportunity for future education.

Similarly in another case, an unmarried, pregnant high school senior was suspended from classes because of a school rule excluding pregnant unmarried students, but not married students, from regular school attendance. [Ordway v. Hargraves, 323 F. Supp. 1155 (1971)] The student's physician testified that she was in excellent health to attend school. In addition, a health service doctor and psychiatrist testified that exclusion from school would cause mental anguish and possibly have an adverse effect on the unborn child.

The school principal failed to provide to the court any educational purposes served by the rule and confirmed that plaintiff's pregnant condition had not caused disruption or interfered with school activities. The primary reason for the rule was to avoid condoning premarital sexual relations.

Favoring the student, the court wrote:

> In summary, no danger to petitioner's physical or mental health resultant from her attending classes during regular school hours has been shown; no likelihood that her presence will cause any

> disruption of or interference with school activities or pose a threat of harm to others has been shown; and no valid educational or other reason to justify her segregation and to require her to receive a type of educational treatment which is not equal of that given to all others in her class has been shown.

See also Farley v. Reinhart, U.S.D.C., N.D. Georgia, #15569, (1972) where an unwed mother was reinstated to classes because of a violation of her constitutional rights under the Equal Protection Clause of the 14th Amendment.

The Paulsboro (N.J.) Board's denial of a married mother's right to the total educational experience, including the right to participate in extracurricular activities was challenged in Johnson v. Board of Education of the Borough of Paulsboro Civil Action No. 172-70 (D.C. N.J., April 14, 1970). The regulation of the school board was:

> Any married student or parent shall be refused participation in extracurricular activities. When a student marries he assumes the responsibilities of an adult and thereby loses the rights and privileges of a school youngster.

The plaintiff claimed that the rule set up two classes of students: those who were married or parents and those who were single and childless. Although both groups could attend class, only the latter could benefit from extra-classroom activities. Because the plaintiff was both married and a parent, she was subject to the penalties of the policy and denied permission to participate in the high school athletic program and senior class trip to Washington, D.C. The court ruled in her favor and against the exclusion rule as a violation of the equal protection clause in holding that the rule bore no reasonable relationship to legitimate school purposes.

In all the above three cases, the courts ruled in favor of unmarried mothers to attend school and in one case to participate in extracurricular activities.

The next case cited here involves a legally married and pregnant student, shown to have high morals and an excellent academic record, who was denied the right to attend school. [Schmidt v. Board of Education, Mt. Vernon School District R-5, Civil Action No. 2246 (D.C. Missouri, September 29, 1971)] She challenged the board's action on the grounds that the school's failure to provide her an education equal to that given other members of her class was a violation of her rights to equal protection.

Arizona provides for Homebound Instruction under Arizona Revised Statutes 15-1001 3(c).

"'Homebound' or 'hospitalized' means a student who is capable of profiting from academic instruction but is unable to attend school due to illness, disease, accident, pregnancy, or handicapping conditions, who has been examined by a competent medical doctor and is certified by that doctor as being unable to attend regular classes for a period of not less than three school months."

In ruling for the student and striking down the regulations, the Court emphasized that attendance at regular scheduled classes was not a privilege but a basic property or personal right not lightly taken away. In reaching its decision, the court said:

> The right to receive a public school education is a basic personal right or liberty. . . The burden of justifying any school rule or regulation limiting or terminating that right is on the school authorities.

Conclusion

Generally, the following guidelines emerge from recent court decisions:

- The right to an education is a fundamental property right not to be denied unless an overriding public interest is served.

- Marriage is not sufficient grounds for exclusion of a student from regular academic or extracurricular activities.

- Pregnancy, whether the girl is married or unmarried, does not appear to be sufficient grounds for exclusion from the regular academic curriculum and probably even extracurricular activities.

In the case of a pregnant student, any exclusion from activities or curriculum should be based on immediate concern for the student and unborn child. A physician should be allowed to determine the extent of academic and extracurricular participation, with mutual agreement if possible of the student and her parents. The student should be removed from activities that might endanger her health at her own or the administrator's request, in conjunction with an order from her doctor.

However, if a pregnant school student refuses to place herself under medical supervision, it would appear that school officials would not only be justified but responsible for removing her from potentially dangerous activities. In all cases, after removal from class, homebound instruction or the equivalent should be made available.

It also seems apparent that schools can exclude married and/or pregnant students from regular attendance at school or participation in extracurricular activities only under the burden of proof to show that the student in question is immoral, causes substantial disruption in the school operation, or presents a clear and present danger to the health, welfare, and safety of other students.

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